

**C. Expansion of the Tax Certificate Policy to Cable Programming Networks**

Growth in the cable television industry has resulted in consolidation of ownership among multiple system operators and fewer entry-level opportunities for minority and small business entrepreneurs.<sup>52/</sup> Growth in the cable television industry has also fueled increasing demands for programming. The number of available national satellite-delivered cable services increased from 43 in 1985 to 68 in 1991.<sup>53/</sup> The demand for diverse programming is expected to increase as the population of the United States becomes increasingly diverse and multicultural.<sup>54/</sup> These changes offer the Commission a unique opportunity to foster minority ownership of cable programming companies via its tax certificate policies. This could be accomplished through extension of the tax certificate to companies that supply cable programming. Owners of cable programming

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<sup>52/</sup> The Conference Report cites a Salomon Brothers report predicting that "consolidation in the [cable television] industry will continue over the next four years resulting in 25 MSO's controlling 90% of the total subscribers compared with the 74% of total subscribers currently under control by the top 25 MSO's." Conference Report, supra note 37, at 37 n. 40 (citing "Top 25 MSO's Will Increase Ownership Over Next Four Years, Predicts Study," Broadcasting, December 30, 1991, at 14.

<sup>53/</sup> Conference Report, supra note 37 at 39. The demand for specialized cable programming suppliers is evident from the dramatic success of Black Entertainment Television, Inc. ("BET"), established in 1979 to provide an outlet for African-American programming on cable television systems. Today, BET is a publicly-traded company which delivers its programming to over 30 million subscribers.

<sup>54/</sup> "Some demographers forecast that, by the first decade of the 21st century, the United States will be comprised of about 55 percent white European heritage Americans, 20 percent African-Americans, 20 percent Hispanic-Americans and 5 percent Asian Americans. Hispanic Americans should constitute a majority of the population, according to some forecasters, in six states and be a significant factor in the three largest states (California, Texas and New York)." Conference Report, supra, note 37 at 57.

networks which sell to minority-owned or controlled companies should be eligible for a tax certificate. Holders of stock or other equity investments in such companies should be able to receive a tax certificate upon the sale of their investment in the company.

In extending the minority tax certificate to cable television in 1982, the Commission determined that because cable operators control programming, they impact program diversity.<sup>55/</sup> The Commission noted that, in the future, it may extend the tax certificate to similar technologies to promote program diversity:

This Policy Statement addresses only cable television systems. It is possible, however, that similar considerations may lead us in the future to extend this program to other services where licensees exercise significant editorial discretion over programming transmitted by their facilities.<sup>56/</sup>

Like cable television operators, cable program suppliers determine editorial content, and many distribute their programming via satellite to cable headends throughout the United States. In these ways, they clearly satisfy the criteria set forth by the Commission for extension of the tax certificate policy.<sup>57/</sup> Accordingly, the

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55/ The Commission has long recognized the importance of fostering program diversity through its regulation of cable television. See, e.g., Cable Television Discriminatory Employment Practices, 34 F.C.C. 2d 186, 190-91 (1972) ("Cable, by virtue of its multi-channel capacity, is uniquely capable of serving the special programming, and other communications needs of discriminated against minority groups.").

56/ Policy Statement on Minority Ownership of Cable Television Facilities, Public Notice, FCC 82-524, (released Dec. 22, 1982) at note 17.

57/ In TV 9, Inc. v. FCC, 495 F. 2d 929, 937 (1973), cert. denied, 419 U.S. 986 (1974), the Court determined that "when minority ownership is likely to increase diversity of content, especially of opinion and viewpoint, merit should be awarded."

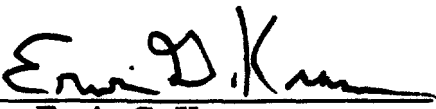
Commission should extend its tax certificate policy to any cable television program supplier which uses FCC-licensed facilities to distribute its programming.

## **V. CONCLUSION**

The tax certificate policy works. It has proven to be a positive, minimally intrusive means of advancing a variety of the Commission's regulatory goals. As such, the Commission should refocus its efforts on improving the tax certificate policy to ensure that it continues to be a meaningful regulatory tool in light of changing marketplace conditions.

Respectfully submitted,

**THE COALITION TO IMPROVE TAX  
CERTIFICATE POLICIES**

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December 8, 1994

**MEMBERS OF THE COALITION TO IMPROVE TAX CERTIFICATE POLICIES**

**BLACK ENTERTAINMENT TELEVISION, INC.**

Black Entertainment Television, Inc. ("BET") is an advertiser-supported basic cable television network. It is the only cable television network whose programming specifically targets the interests and concerns of black Americans.

**BLACKSTAR COMMUNICATIONS, INC.**

BLACKSTAR COMMUNICATIONS, INC., is a minority-controlled company which is the parent of Blackstar Communications of Florida, Inc., licensee of WBSF-TV, Melbourne, Florida, Blackstar Communications of Michigan, Inc., licensee of WBSX-TV, Ann Arbor, Michigan, and Blackstar Communications of Oregon, Inc., licensee of KBSP-TV, Salem, Oregon.

**BROADCAST CAPITAL FUND, INC.**

BROADCAST CAPITAL FUND, INC. ("BROADCASTCAP") is a Minority Enterprise Small Business Investment Company ("MESBIC") licensed by the Small Business Administration ("SBA") under Section 301(d) of the Small Business Investment Company Act of 1958. BROADCASTCAP is the only nonprofit MESBIC ever chartered by the SBA. It was established in 1979 in a joint effort by the National Association of Broadcasters, the three major broadcast networks and several major broadcast group owners, to help remedy the underrepresentation of minorities in broadcast ownership. Since its founding, BROADCASTCAP has provided financing for the construction or acquisition of 39 minority-owned radio and television stations.

**GRANITE BROADCASTING CORPORATION**

GRANITE BROADCASTING CORPORATION is a minority-controlled company which is the licensee of four network-affiliated television stations: KNTV-TV, San Jose, California; WEEK-TV, Peoria, Illinois; WPTA-TV, Fort Wayne, Indiana; and KBJR-TV, Duluth/Superior, Wisconsin, WTVH-TV, Syracuse, New York, KSEE(TV), Fresno, California, and KBVO(TV), Austin, Texas (transfer pending at the FCC).

### **KT COMMUNICATIONS, L.P. III**

KT COMMUNICATIONS, L.P. III is a minority-owned company which is the licensee of WKEF-TV, Dayton, Ohio.

### **MINORITY BROADCAST INVESTMENT CORPORATION**

MINORITY BROADCAST INVESTMENT CORPORATION ("MBIC") Minority Enterprise Small Business Investment Company "MESBIC") licensed by the Small Business Administration ("SBA") under Section 301(d) of the Small Business Investment Company Act of 1958. MBI was the first broadcast industry in the USA. MESBIC was established in 1979 in a joint effort by Storer Communications and Walter L. Threadgill to help remedy the underrepresentation of minorities in broadcast ownership. Since its founding, MBIC has provided financing for the construction or acquisition of 17 minority-owned radio and television stations.

### **MINORITY MEDIA AND TELECOMMUNICATIONS COUNCIL**

MINORITY MEDIA AND TELECOMMUNICATIONS COUNCIL founded in 1986, is an association of approximately 100 lawyers, engineers and scholars who provide pro bono support to civil rights organizations in policy and rulemaking matters before the FCC. It promotes FCC rules and private industry initiatives aimed at increasing opportunities for minorities to own media and telecommunications facilities.

### **NATIONAL ASSOCIATION OF MEDIA BROKERS**

The NATIONAL ASSOCIATION OF MEDIA BROKERS is the principal trade association of brokers who service the broadcast industry.

### **WKYS, INC.**

WKYS, INC., a minority-owned company, is the licensee of WKYS-FM, Washington, D.C.

### **US RADIO, L.P.**

U.S. RADIO, L.P., is a minority-owned group owner of radio broadcast stations. U.S. Radio, L.P., and its affiliated companies, are the licensees of several AM and FM broadcast stations.

## **CERTIFICATE OF SERVICE**

I, Anastasia C. Chung, a secretary in the law firm of Verner, Liipfert, Bernhard, McPherson and Hand, Chartered, hereby certify that copies of the foregoing "PETITION OF THE COALITION TO IMPROVE TAX CERTIFICATE POLICIES" was mailed first-class, postage prepaid, this 8th day of December, 1994 to the following:

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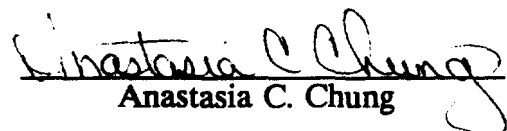
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